IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-09-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.32430 OF 2003

Jasima Shahabudeen
D/o. Shahabudeen
No.6, Vazhai Kollai Street,
Neravy Post, Karaikal,
Pondicherry State 609 604. .. Petitioner

Vs.

1. The Government of Pondicherry,
   Rep. by its Secretary,
   Health Department,
   Chief Secretariat, Pondicherry.

2. Centralised Admission Committee
   (CENTAC), rep. by its Convenor,
   Pondicherry Engineering College,
   Pondicherry 605 014.

3. Pondicherry University,
   Rep. by its Registrar,
   Kalapet, Pondicherry 605 014.

4. Vinayaka Missions' Medical College,
   Rep. by its Dean, Keezhakasakudimedu,
   Kottucherry Post, Karaikal 609 609.

5. Arupadai Veedu Medical College &
   Hospital, Rep. by its Dean,
   Cuddalore Road, Kirumapakkam,
   Pondicherry.

6. Medical Council of India,
   rep. by its Chairman,
   Opposite to Mata Sundari College
   for Women, New Delhi 110 002.
   (Impleaded as per order
   dated 2.12.03 in WPMP.41238/03) .. Respondents

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Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus directing the 1st respondent to implement the judgment of the Honourable Apex Court in MRIDUL DHAR (minor) & Another v. UNION OF INDIA & others case, reported in 2005 (1) Scale page 250 in Direction No.11 contained in paragraph 35, with reference to the excess admission in MBBS Course made by the 4th and 5th respondents colleges for the academic year 2003-2004 over and above the prescribed quota to enable the petitioner to join 1st year MBBS Course.

For Petitioner : Mr. Kandavadivel Doraisami

For Respondents 1to3: Mr.T. Murugesan,
Government Pleader for
Pondicherry

For Respondents 4-5 : Mr. Satish Parasaran

For Respondent-6 : Mr.R. Singaravelan

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J U D G M E N T

The petitioner was a candidate for admission to MBBS course during the academic year 2003-04. Originally when the writ petition was filed on 10.11.2003, the prayer was for issuing writ of Mandamus directing the Centralised Admission Commission (CENTAC), the second respondent in the writ petition, to conduct supplementary counselling for the vacant seats as against Government quota in respect of Vinayaka Missions' Medical College, the fourth respondent, and Arupadai Veedu Medical College, the fifth respondent, to enable the petitioner to join the 1st year MBBS Course during the academic year 2003-2004. By order dated 8.4.2005, the petitioner was permitted to amend the prayer seeking for a direction to the Government of Pondicherry, the first respondent, to implement the judgment of the Supreme Court in *Mridul Dhar (Minor) & Another v. Union of India & others (2005 (1) Scale 250)* in paragraph 35, with reference to excess admission in MBBS Course made by the 4th and 5th respondent colleges to enable the petitioner to join in the first year MBBS Course.

2. Petitioner is a candidate coming within OBC category in Pondicherry. She had appeared for the entrance examination conducted by the second respondent during the year 2003-04. Her score for the said year was 135.042. She had received Counselling Call Letter dated 20.9.2003 to attend the Counselling on 25.9.2003 for provisional admission to 1st year MBBS Course in the 4th and 5th respondent Medical Colleges. During the relevant time, by virtue of interim order passed in the other connected matters, the Government

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quota was 40% of seats in four colleges. Even though full quota of seats have been allotted to other colleges, regarding 4th and 5th respondent colleges, the 2nd respondent did not allot the entire Government quota but only allotted 36 candidates out of 40 seats in respect of 4th respondent college and 35 candidates out of 40 seats in respect of 5th respondent college. The petitioner had approached the second respondent authority to conduct supplementary counselling, but the second respondent did not heed to such request. In the amendment petitions numbered as WPMP.NOs.9350 & 9351 of 2005, it was stated that the Supreme Court in the decision reported in 2005(1) Scale 250 has indicated :

> "35. ... 11. If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year."

Relying upon the aforesaid observation, in the petition for amendment, it has been prayed that necessary direction should be given to the respondents to give effect to such observation of the Supreme Court.

3. The main grievance of the petitioner is that though the seats were lying vacant, the Government did not sponsor the entire quota because of callousness or culpable indifference, as a result of which the respondents 4 and 5 admitted students beyond their quota of 60% to fill up the vacant seats.

4. A counter affidavit has been filed on behalf of the respondents 1 and 2. It has been indicated that 4th respondent college had got the renewal on 23.9.2003 and 5th respondent college got the renewal on 5.9.2003. Counselling for admission to these colleges was held on 25th and 26th September, 2003. In respect of 5th respondent college, number of students sponsored at the end of the counselling on 27.9.2003 was 38, whereas in respect of 4th respondent college it was 36, and the other seats were not sponsored for want of students in a particular category for whom reservation had been made. As per the Pondicherry University norms as well as the communication received from the Medical College of India, the last date of admission for the academic year 2003-04 was 30.9.2003 and, therefore, there was no time left for the CENTAC to conduct further counselling and sponsor other candidates. On 1.10.2003, the colleges furnished the enrolment status. It was indicated that there was vacancy of 4 seats in 5th respondent college and vacancy of 7 seats in 4th respondent college. It was also indicated that since details were furnished on 1.10.2003 and the last date was over, the sponsored seats could not be filled up.

5. A counter affidavit has also been filed on behalf of

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Medical Council of India, which has been subsequently impleaded as Respondent No.6. In such counter affidavit, emphasis has been laid on the time schedule to be followed and it has been indicated that no mid-session admission is permissible as held by the Supreme Court in several decisions.

6. It is no doubt true that since the seats within the Government quota are not filled up, the two colleges in question admitted other candidates by treating such surplus seats as management quota. In course of hearing, it has been submitted that those two colleges have become deemed University, and, therefore, they are no longer governed by the G.O. relating to Government quota and their admission test and procedure being different, no direction can be issued regarding admission of the petitioner during the present session by adjusting such admission against the management quota. In view of the subsequent development, as indicated, resorting to such a method is out of bounds.

7. The next question is as to whether a direction should be issued for admission of the petitioner against Government quota on the basis of the marks obtained during 2003-04 common entrance test.

8. For the current academic session, as per the judicial order passed by the High Court, the Government quota is fixed at 50%. One seat is directed to be kept vacant by the interim order passed by this Court so far as the present writ petition is concerned.

9. Learned counsel for the petitioner has submitted that since the petitioner was not at fault and the petitioner could not get admission during 2003-04 on account of the mistake committed by the CENTAC, in the interest of justice, the petitioner should be directed to be admitted during the present session on the basis of the marks which she had obtained in the common entrance test held for the year 2003-04. In support of such submission, the learned counsel for the petitioner has placed reliance upon several decisions of the Supreme Court.

10. In Civil Appeal No.4051 of 2004 disposed of on 12.7.2004, the question raised was almost similar. In the said case, the Madras High Court while upholding the contention of the candidate that he was more meritorious than the other candidate selected, directed admission of the candidate during the same academic session and further directed the State Government to seek for permission to create additional seat. Such direction was challenged by the Medical Council of India in the Supreme Court. The Supreme Court while upholding the contention of the Medical Council of India that no such direction for creation of additional seat should be issued, observed :

> "However, the Respondent No.1 writ petitioner has been pursuing his studies pursuant to the impugned order atleast

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from the beginning of this year. In that view of the matter, we are of the view that the respondent writ petitioner should be granted admission for the academic year 2004-05 without any further counselling within the permissible intake limit."

In other words, the petitioner in the said case was allowed to get admission during the next year.

11. Learned counsel for the petitioner further relied upon the decision of the Supreme Court in Civil Appeal Nos.2423 to 2425 of 2005 disposed of on 4.4.2005. The appeal was filed by the Dental Council of India against the direction of the High Court In the said case, one candidate Dr. Deepa was ranked higher than that Dr. Pravina, but Dr. Pravina had been admitted. The High Court found that neither Dr. Pravina nor Dr. Deepa were at fault and directed creation of supernumerary seat for accommodating Dr. Deepa in the course for the Academic Year 2004-2005. The Supreme Court while allowing the Civil Appeals filed by the Dental Council of India and the Selection Committee and observing that direction for creation of additional seat should not have been issued, held as follows :-

"The question still remains about accommodating Dr.Deepa in the course, above-referred. Having regard to the peculiar facts of the case, we direct that in the Academic Year 2005-2006, Dr. Deepa shall be accommodated in M.D.S. (Orthodontics) in Ragas Dental College. We may note that by order dated 14th March, 2005, it was directed that one seat in M.D.S. (Orthodontics) shall not be filled for the Academic Year 2005-2006. The admission granted to Dr.Deepa in the aforesaid college would be out of the Government quota. The learned counsel appearing for the College has no objection in this regard. We are also of the view that,having regard to the peculiar facts of the case, it is the only proper course in order to do substantial justice between the parties without it being treated as a precedent."

12. It is of course true as pointed out by the learned counsel for the respondents that the aforesaid order was passed on its own peculiar facts and the Supreme Court itself observed that such order should not be treated as a precedent. However, the facts were almost similar.

13. In 2004(4) CTC 796 (DOLLY CHHANDA v. CHAIRMAN, JEE & OTHERS), a Bench consisting of three Honourable Judges was considering the question of admission to MBBS Course almost under similar circumstances. In the said case, in respect of special category reserved for children or widow of personnel of armed or paramilitary forces killed or disabled in action, the petitioner was

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not selected as the certificate produced by the petitioner was found to be not in order by the Committee. The Orissa High Court had upheld the action of the Selection Committee by judgment dated 31.10.2003. The Supreme Court found that non-selection of the petitioner was on a highly technical view, even though the petitioner was actually eligible. The Supreme Court thereafter observed :-

> "9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. She may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29.6.2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.
>
> 10. The appellant had qualified in the JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year.
>
> 11. The appeal is accordingly allowed with costs. the judgment and order dated 31.10.2003 of the High Court is set aside. The respondents are directed to give admission to the appellant in any one of the State medical colleges forthwith. In case the State seats have already been filed up, one extra seat shall be created for her."
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> (Emphasis added)

14. As against the aforesaid decisions or orders of the Supreme Court, the learned counsel appearing for the respondents 1 and 2 placed reliance upon the decisions of the Supreme Court reported in (2000) 9 SCC 115 (RAJIV KAPOOR AND OTHERS v. STATE OF HARYANA AND OTHERS), (2002) 7 SCC 258 (MEDICAL COUNCIL OF INDIA v. MADHU SINGH AND OTHERS) and (2005) 2 SCC 65 (MRIDUL DHAR (Minor) AND ANOTHER v. UNION OF INDIA AND OTHERS). So far as the later two decisions are concerned, it has been stated therein that no direction should be issued for admission during mid-course and the time schedule for admission should be strictly complied with and there should not be any increase of seats. The ratio in those decisions is not applicable as in the present case the question is as to whether the petitioner can be accommodated on the basis of the result of the earlier year.

15. In (2000) 9 SCC 115 (cited supra), the dispute was relating to admission to Postgraduate degree and diploma courses in Medicine from amongst the Haryana Civil Medical Service candidates

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for the academic session 1997. The petitioner before the High Court claimed that, as per the prospectus, selection for admission to be made only on the basis of the marks obtained by a candidate in the entrance examination. But the contesting respondents as well as the State Government contended that the marks obtained in the entrance examination only entitled them to be called for interview, being only a qualifying test and the final selection against the reserved seats was required to be made by the Selection Committee on the basis of the specified criteria stipulated by the Government from time to time, based on the academic career, experience, rural service, annual confidential reports and marks obtained at the interview. The High Court, however, accepted such contention of the petitioners and directed cancellation of the admission given to the contesting respondents on the basis that selection is to be made only on the basis of merit, as per the marks obtained in the written entrance examination. The contesting private respondents before the High Court filed appeal. The State of Haryana intimated that the order of the High Court had been implemented and the State do not intend to unsettle the position insofar as the already selected candidates were concerned but the question of law should be decided. The Supreme Court came to the conclusion that the High Court fell into error in sustaining the claim of the writ petitioners and observed that merits of such candidates were required to be adjudged in terms of the criteria contained in the Government Orders. However, even though the Supreme Court differed from the conclusion of the High Court, it refused to pass any order regarding admission of the successful appellants in any subsequent academic year and did not interfere with the admission of the writ petitioners (Respondents before the Supreme Court). It is profitable to quote the relevant observations made by the Supreme Court :-

> "16. The dispute relates to the academic session of the year 1997 and we are in 2000. To utilise the seats meant for the next academic year by accommodating those candidates of 1997 vintage would amount to deprivation of the legitimate rights of those who would be in the fray of contest for selection, on the basis of their inter se merit for the session of 2000, taking into account the performance of the candidates of 1997 in that year. The suggestion to create additional seats, apart from the objections from the State, cannot also be acceded to for the purpose of admitting only the appellants inasmuch as any additional seats even if allowed to be created during a particular year must be filled up only on the basis of the standard and merit performance of the candidates participating in the contest for the said year. That apart, some of the appellants appear to have got admitted into diploma courses, having not been selected for degree courses and there is no scope for adjusting the period of study put in by them while pursuing diploma course, as one spent for PG degree course. There is also a positive

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prohibition for a candidate pursuing PG diploma course in a particular discipline to claim to do PG degree course in a different discipline." (Emphasis added)

16. The aforesaid decision of the Supreme Court was followed by a Division Bench of this Court in W.A.No.1441 of 2005 dated 6.9.2005. In the said case, the question related to admission to Post Graduate course, namely, M.D.S. The last date for admission to the course was 31.5.2004. On that date itself, a successful candidate, who had been selected against All India Quota discontinued for admission and as such one vacancy arose. The learned single Judge in a writ petition filed in March, 2005, i.e., after about 10 months, directed that another candidate should be admitted during the academic session 2005 or academic session of 2006. The Division Bench reversed such decision by observing :-

"9. Assuming the said Archana, who was accommodated under All India quota discontinued her studies, the same cannot be allotted to the first respondent herein since any such vacancy if at all goes to the reserved category. The records placed before us disclose that the said Archana discontinued her studies by giving a letter on 31-05-2004 afternoon, but the first respondent herein has chosen to file the writ petition only on 22-03-2005 i.e., after lapse of one year. The decisions of the Honourable Apex Court extracted above show that admitting students in midstream, even if seats are unfilled not permissible, the telescoping of unfilled seats of one year with permitted seat of the subsequent year also prohibited and the utilisation of seats meant for the next academic year by accommodating candidates of previous academic year would amount to deprivation of legitimate right of those who would be in the fray of contest for selection, on the basis of their inter se merits for the next academic year. Admittedly, the said vacancy also not filled up by the appellants after 31-05-2004 in view of the decisions of the Honourable Apex Court as well as the guidelines issued by the Director General of Heath, New Delhi, hence the argument of the first respondent that she should have been accommodated in the vacancy which resulted in discontinuation of the said Archana is to be rejected." (Emphasis added)

17. The decision of the Supreme Court in *Dolly Chhanda's* case was distinguished by observing that in the said case, the writ petition had been filed immediately and candidates who had secured lower marks or lower rank were admitted.

18. The reluctance of the Courts to adjust a student in the subsequent year's admission in respect of Post Graduate Courses, which have less intake capacity and are much more "merit oriented"

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need not percolate down in the matters relating to admission to MBBS and the students who would be deprived this year as a consequence can have their chance in the coming years. The two unreported decisions of the Supreme Court and the decision in *Dolly Chhanda's* case reflect a less inflexible judicial policy at least in the matters relating to admission to MBBS, where the illegality is that of the Government or the Selection Committee.

19. The course adopted by the Supreme Court in *Dolly Chhanda's* case as well as two unreported orders appears to be very apt and proper to be applied in the peculiar facts and circumstances of the present case. In this connection, it is also necessary to emphasise that the decision in *Rajiv Kapoor's* case is distinguishable in the sense that in the said case the fault was not of the State (Even though the fault was not of the candidate). Moreover, in the said case, the question related to admission in the Post Graduate course and some of the appellants had already taken admission to Diploma courses and there has been specific prohibition that those who have already admitted to Diploma courses could not take admission to said Post Graduate course.

20. In the present case, for the current year a seat has already been reserved as per the direction issued by this Court. If the State Government would have discharged its duty during the academic year 2003 promptly, the petitioner could have been immediately selected even before the time schedule. On the other hand, the State Government did not take any steps for immediate second counselling and surrendered seats, which were gleefully filled up by the management in addition to the normal management quota. Of course for the subsequent year, the management quota could have been reduced on the footing that the management had the benefit of admission of students beyond its normal quota. However, such a direction cannot be given this year as in the meantime two colleges in question have become Deemed Universities and, therefore, they are no longer obliged to admit students on the selection made by the State Government and they are obviously following their own separate procedure of selection.

21. The petitioner was vigilant enough and has been pursuing the writ petition from the very inception and it cannot be said that the petitioner was guilty of any laches. The petitioner comes within the Other Backward Category. Since the petitioner was not at all at fault and the default was on the part of the State Government in surrendering several seats, equity tilts in favour of the writ petitioner. It would be indeed a sad reflection on the judicial system if the petitioner is told "even though you have come to Court with all promptitude and had a right to be admitted during a particular year, the Court cannot come to your rescue because the Court could not decide the matter immediately and, therefore, your writ petition has become infructuous".

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22. The delay in deciding cases in courts has indeed assumed alarming proportions. Even though the courts themselves may or may not be held responsible for the inordinate delay in deciding cases in view of the exploding dockets, the litigants are not to be blamed in any manner if their cases cannot be taken up within a reasonable time and it would be indeed very ironical if the case of a deserving petitioner would be dismissed and no relief would be granted merely because it was impossible for the court to take up the case within a reasonable time. In this context, I feel, it is my obligation to quote the observation made by the Supreme Court in (1980) 2 SCC 593 (GUJARAT STEEL TUBES LTD. AND OTHERS v. GUJARAT STEEL TUBES MAZDOOR SABHA AND OTHERS), of course in a different context :-

> "164. This litigation, involving many workmen living precariously on poor wages amidst agonising inflation and a Management whose young budget, what with steel scarcity, may well be shaken by the burden of arrears, points to the chronic pathology of our Justice System — the intractable and escalating backlog in the Forensic Assembly Line that slowly spins Injustice out of Justice and effectually, wears down or keeps out the weaker sector of Indian life. This trauma is felt more poignantly in labour litigation and the legislature fails functionally if it dawdles to radicalise, streamline and simplify the conflict resolution procedures so as to be credibly available to the common people who make up the lower bracket of the nation. The stakes are large, the peril is grave, the evils are worse than the prognostics of Prof.Laurence Tribe (of the Harvard Law School);
>
> > If court backlogs grow at their present rate, our children may not be able to bring a lawsuit to a conclusion within their lifetime. Legal claims might then be willed on, generation to generation, like hillbilly feuds; and the burdens of pressing them would be contracted like a hereditary disease.
>
> 165. Law may be guilty of double injustice when it is too late and too costly for it holds out remedial hopes which peter out into sour dupes and bleeds the anaemic litigant of his little cash only to tantalise him into a system equal in form but unequal in fact."

23. What was said in the context of disputes involving Labour Law applies with equal, if not greater, vigour to legal disputes relating to admission in Education Institutions.

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24. Having regard to all these peculiar facts, in the present case, I deem it fit and proper to give a direction that the present petitioner should be admitted

during the relevant academic session as per the schedule approved and emphasised in *Mridul Dhar's* case. In normal course, the admission against Government quota is to take place before 31.8.2005. However, for sufficient reasons, such admission can take place on or before 30.9.2005.

25. Accordingly, the writ petition is allowed and the State Government is directed to sponsor the candidature of the petitioner against the reserved seat kept vacant as per the order of this Court. This direction should be complied with within a period of one week from the date of receipt of a copy of the order. There would be no order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

dpk
To
1. The Government of Pondicherry,
   Rep. by its Secretary,
   Health Department,
   Chief Secretariat, Pondicherry.
2. Centralised Admission Committee
   (CENTAC), rep. by its Convenor,
   Pondicherry Engineering College,
   Pondicherry 605 014.
3. Pondicherry University,
   Rep. by its Registrar,
   Kalapet, Pondicherry 605 014.
4. Medical Council of India,
   rep. by its Chairman,
   Opposite to Mata Sundari College
   for Women, New Delhi 118 002.

one cc to Mr Kandavadivel Doraisami, Advocate Sr No. 39185
one cc to the Govt Pleader (Pon.)High Court, Madras (SR39277)
one cc to Mr R.Singaravelan, Advocate Sr No. 39415
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